

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
PAUL TAM	:	DETERMINATION
for Redetermination of Deficiencies or for Refund of	:	DTA NOS. 819366 &
New York State Personal Income Tax under Article 22 of	:	819367
the Tax Law and New York City Personal Income Tax	:	
under the Administrative Code of the City of New York	:	
for the Years 1998, 1999, 2000 and 2001.	:	

Petitioner, Paul Tam, 20 Confucius Plaza #17-B, New York, New York 10002, filed petitions for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under the Administrative Code of the City of New York for the years 1998, 1999, 2000 and 2001.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York on September 16, 2003 at 10:30 A.M., with all briefs to be submitted by January 23, 2004, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Justine Clarke Caplan, Esq., of counsel).

ISSUE

Whether petitioner substantiated his claimed itemized deductions for the years at issue.

FINDINGS OF FACT

1. During the years at issue, petitioner was employed as a security guard earning wages of \$27,945.72 in 1998, \$28,666.08 in 1999, \$28,045.10 in 2000, and \$30,865.39 in 2001.

Petitioner reported no New York State and City income taxes due in any of the years at issue. Rather, he sought and received a refund of taxes he reported as overwithheld from his wages in the amounts of \$1,986.95 in 1998, \$2,058.48 in 1999, \$1,534.04 in 2000, and \$1,780.05 in 2001.

2. The Division of Taxation (“Division”) issued a Statement of Proposed Audit Changes dated May 25, 2001 against petitioner asserting 1998 New York State personal income tax due of \$159.00 plus interest and 1998 New York City personal income tax due of \$138.00 plus interest. This statement showed the following computation of tax due, based upon a reduction of \$4,466.00 to petitioner’s itemized deductions, computed as follows:

Total itemized deductions allowed on federal return:	\$ 23,456.00
Less: state, local and foreign income taxes included in Federal itemized deductions:	<u>(1,986.00)</u>
New York itemized deductions corrected	\$ 21,470.00
 Total New York itemized deductions claimed by petitioner on his tax return as filed	 \$ 25,936.00
New York itemized deductions corrected	<u>(21,470.00)</u>
Adjustment to itemized deductions	\$ 4,466.00
 New York taxable income reported	 \$ 9.00
Adjustment	<u>4,466.00</u>
New York taxable income corrected	\$ 4,475.00
 New York State tax	 \$179.00
Less: New York State household credit	<u>(20.00)</u>
New York State tax	\$159.00
New York City personal income tax	<u>\$138.00</u>
Total New York State and City income taxes	\$297.00

The statement provided the following explanation for the recomputation of petitioner’s 1998 income tax:

New York State has an exchange of information agreement with the Internal Revenue Service. The Internal Revenue Service provided us with information reported on your 1998 federal income tax return.

The New York itemized deductions on the New York State return are computed using the itemized deductions from your federal return. We compared the amounts on your 1998 federal and New York State returns, and we identified a difference. We have recomputed your New York itemized deductions using the federal information.

* * *

We adjusted your city of New York resident tax based on the change in your New York taxable income.

3. The Division then issued a Notice of Deficiency dated November 13, 2001 against petitioner asserting total New York State and City personal income taxes due for 1998 of \$297.00 plus interest. This notice referenced the Statement of Proposed Audit Changes dated May 25, 2001, as detailed in Finding of Fact "1". On October 21, 2002, petitioner attended a conciliation conference at which he contested this assertion of tax due of \$297.00 plus interest. The conferee in response prepared a consent form, which, if signed by petitioner, would have conceded the asserted tax liability plus interest. However, petitioner refused to sign the consent form, and by a conciliation order dated November 22, 2002, petitioner's request was denied and the notice sustained by the conferee.

4. In the period between the conciliation conference held on October 21, 2002 and the issuance of the conciliation order dated November 22, 2002, the Division, by its desk audit section, sent a letter dated November 18, 2002 to petitioner requesting that he provide substantiation for itemized deductions claimed on his tax returns for 1999, 2000 and 2001. Petitioner asserts that this letter was sent because he refused to sign the consent to the assessment for 1998 prepared by the conferee.

5. With reference to 1999, 2000 and 2001, the Division did not issue statements of proposed audit changes but rather issued three separate notices of deficiency, each dated December 30, 2002, which provided a detailed explanation of the basis for the assertion of tax

due for the respective years. These notices were issued after the auditor reviewed petitioner's response to his letter dated November 18, 2002 requesting substantiation of claimed itemized deductions. In petitioner's response, which was received by the auditor on December 17, 2002, petitioner sent copies of his Federal itemized deduction Schedules A for each of the three years at issue and copies of some checks and letters. On their face, petitioner's documents were either copies of originals which he had altered in a gross fashion or badly concocted fakes. For example, for each of the years at issue, petitioner prepared a fake "To Whom It May Concern" letter "certifying" that he had contributed certain amounts of money "in check" to "Presbyterian Church" located at 61 Henry Street, New York, New York. Each of the three letters, one for each of the three years at issue, was typed on plain paper with no letterhead. Further, these letters were in *the same exact format* as other "To Whom It May Concern" letters, also on plain paper with no letterhead, submitted by petitioner from his employer, F.J.C. Security Services, Inc.,¹ and bank, Abacus Federal Savings Bank, to support other expenses which he claimed as itemized deductions. Consequently, shortly after the auditor's receipt of these obviously fake documents, deficiency notices were issued against petitioner.

6. The Notice of Deficiency dated December 30, 2002 and issued against petitioner for 1999 asserted total New York State and City personal income taxes due for that year of \$1,534.00 plus interest as well as negligence penalties under Tax Law § 685(b)(1) and (2). It provided the following detailed explanation:

¹ Petitioner also claimed deductions for each of the years at issue for unreimbursed employee expenses, which also were unsupported by any legitimate evidence. Rather, petitioner concocted "To Whom It May Concern" letters, clearly bogus.

On [November 18, 2002²] our Department issued a letter requesting you verify the Itemized Deductions claimed on your 1999, 2000 & 2001 tax returns.

The information you provided, by correspondence received December 17, 2002, contained 'altered documents.'

The Tax Department can not allow itemized deductions based on 'altered documents.'

The Notice of Deficiency then detailed the following examples of altered documents submitted by petitioner to support his claimed itemized deductions for 1999 of \$19,104.00:

1. For the \$17,700 in claimed Medical Expenses:

Documentation received reflected a one page receipt titled 'Consultation sheet' for a stated \$17,700.00 (a high figure for a consultation fee).

This was accompanied by an 'altered check' number 0300, from the account of Paul and Peter Tam. The bank named was Arabus Federal Savings Bank.

The name portion of the check appears altered. The date appears to be altered. The check amount is definitely [sic] altered.

2. Cash Charitable Contributions.

The check for \$248 supposedly paid to the Presbyterian Church is also altered. The alteration process of check number 0301 is similar to check #0300, except the check number itself may have been altered.

* * *

The document presented for real estate taxes and mortgage interest was not accepted because: a) it did not reflect the person to whom it was addressed, and b) the name of the cooperative issuing the statement was missing.

7. The Notice of Deficiency for 1999 also advised petitioner that the standard deduction for tax year 1999 for a single filer like petitioner was \$7,500.00. In calculating tax due for 1999, after disallowing petitioner's claimed itemized deductions of \$19,104.00, it allowed the

² In the notices of deficiency, the date of the Division's letter requesting that petitioner substantiate his itemized deductions was incorrectly stated to be March 29, 2002.

standard deduction of \$7,500.00. Petitioner's tax liability for 1999 for New York State personal income tax and New York City personal income tax was increased to \$904.00 and \$632.00, respectively, for total 1999 personal income tax due of \$1,534.00 (after allowing a \$2.00 credit for taxes previously stated).³

8. The Notice of Deficiency dated December 30, 2002 issued against petitioner for 2000 asserted total New York State and City personal income taxes due for that year of \$1,486.00 plus interest as well as negligence penalties under Tax Law § 685(b)(1) and (2). Like the notice for 1999, detailed in Finding of Fact "6", it noted petitioner's provision of "altered documents" in response to its letter of November 18, 2002 to support, in this instance, his claimed itemized deductions for 2000 of \$18,534.00. It provided the following "examples" of "altered documents":

1. For the \$17,600 in claimed Medical Expenses:

Documentation received reflected a one page receipt titled "Consultation Sheet" for a stated \$17,600.00 (an enormous figure for a consultation fee).

This was accompanied by an "altered check" number 0325 (Abacus F.S.B.), made out to a stated Dr. O'Brien, drawn from the account of Paul Tam & Peter Tam.

The name portion of the check appears altered. The date appears to be altered. The check amount is definitely altered. The check number appears to be altered.

2. Cash Charitable Contributions.

The check for \$247 supposedly paid to the Presbyterian Church is also altered. The alteration process of check number 0326 is similar to that alteration process made to check #0325 (referenced above).

* * *

³ For each of the years 1999, 2000 and 2001, the Division in the respective notices of deficiency allowed a credit for \$2.00 for taxes previously stated. However, a review of petitioner's tax returns included in the record, as noted in Finding of Fact "1", shows that he previously stated no taxes due for any of these years. This minor discrepancy is unexplained.

The document presented for real estate taxes and mortgage interest was not accepted because: a) it did not reflect the person to whom it was addressed, and, b) the name of the cooperative issuing the statement was missing.

9. The Notice of Deficiency for 2000 also advised petitioner that the standard deduction for tax year 2000 for a single filer like petitioner was \$7,500. In calculating tax due for 2000, after disallowing petitioner's claimed itemized deductions of \$18,534.00, it allowed the standard deduction of \$7,500.00. Petitioner's tax liability for 2000 for New York State personal income tax and for New York City personal income tax was increased to \$886.00 and \$602.00, respectively, for total 2000 personal income tax due of \$1,486.00 (after allowing a \$2.00 credit for taxes previously stated).

10. The Notice of Deficiency dated December 30, 2002 issued against petitioner for 2001 asserted total New York State and City personal income taxes due for that year of \$1,693.00 plus interest as well as negligence penalties under Tax Law § 685(b)(1) and (2). Like the notices for 1999 and 2000, detailed in Findings of Fact "6" through "9", it noted petitioner's provision of "altered documents" in response to its letter of March 29, 2002 to support, in this instance, his claimed itemized deductions for 2001 of \$21,353.00. It provided the following "examples" of "altered documents":

1. For the \$27,210 in claimed Medical Expenses:

Documentation received reflected a one page receipt titled "Consultation Sheet" for a stated \$27,210.00, purportedly for emergency admitting.

This was accompanied by an "altered check" number 0350 (Abacus F.S.B.), made out to a stated Dr. O'Brien, drawn from the account of Paul Tam & Peter Tam.

The name portion of the check appears altered. The date appears to be altered. The check amount is definitely altered. The check number appears to be altered.

2. Cash Charitable Contributions.

The check for \$249 supposedly paid to the Presbyterian Church is also altered. The alteration process of check number 0346 is similar to that alteration process made to check 0350 (referenced above).

* * *

The document presented for real estate taxes and mortgage interest was not accepted because: a) it did not reflect the person to whom it was addressed, and; b) the name of the cooperative issuing the statement was missing.

11. The Notice of Deficiency for 2001 also advised petitioner that the standard deduction for tax year 2001 for a single filer like petitioner was \$7,500.00. In calculating tax due for 2001, after disallowing petitioner's claimed itemized deductions of \$21,353.00, it allowed the standard deduction of \$7,500.00. Petitioner's tax liability for 2001 for New York State personal income tax and for New York City personal income tax was increased to \$1,067.00 and \$628.00, respectively, for total 2001 personal income tax due of \$1,693.00 (after allowing a \$2.00 credit for taxes previously stated).

12. In light of the auditor's determination that petitioner utilized altered and fake documents to support his claimed itemized deductions, each of the notices of deficiency for 1999, 2000 and 2001 included the following directive:

If you choose to contend the checks presented to the Tax Department were not altered. [sic] Please be sure to bring the 'originals' to the requested Conciliation Conference or Hearing. We will present the 'copies' we received, for comparison.

Petitioner conceded that he did not bring "the actual canceled checks" to the hearing.

CONCLUSIONS OF LAW

A. A properly issued Notice of Deficiency is presumed to be correct and the taxpayer has the burden of demonstrating the incorrectness of such an assessment (***Matter of Leogrande v. Tax Appeals Tribunal***, 187 AD2d 768, 589 NYS2d 383, ***lv denied*** 81 NY2d 704, 595 NYS2d 398; ***Matter of Riad***, Tax Appeals Tribunal, October 2, 2003).

B. With regard to the first year at issue, 1998, which is the subject of petitioner's first petition, the Division properly increased petitioner's income tax liability for such year from his reported no tax due to a combined New York State and City income tax due of \$297.00. Pursuant to Tax Law § 612(a), the New York adjusted gross income of a resident individual means "his federal adjusted gross income as defined in the laws of the United States for the taxable year . . . [with certain modifications not relevant here]." Consequently, as noted in Finding of Fact "2", the Division correctly limited petitioner's itemized deductions to the amount allowed on his federal return of \$23,456.00. Further, pursuant to Tax Law § 615(c), the Division properly reduced such amount for "income taxes imposed by [New York] or any other taxing jurisdiction," which had been claimed by petitioner on his Federal return in the amount of \$1,986.00 according to the Division. Petitioner offered no evidence that this amount was in error, and the Division's computation of tax due for 1998, plus interest, is therefore upheld.

C. Turning to the remaining three years at issue, 1999, 2000 and 2001, which are the subject of petitioner's second petition, it is initially concluded that petitioner's contention that assessments for these years were issued by the Division in retaliation for his refusal to consent to tax due in 1998 at the conciliation conference is unsupported by any evidence whatsoever and is meritless. Rather, petitioner's returns for these later years were "red flagged" because his itemized deductions were high in comparison to his income according to the auditor. Moreover, as discussed in these Conclusions of Law, petitioner has shown a complete lack of any good faith basis for his position that his claimed deductions for these three years were legitimate and not simply a dishonest attempt to receive a refund of income taxes withheld on his wages. Consequently, petitioner should view as good fortune the fact, as noted in Finding of Fact "2",

that the Division accepted the amounts he claimed as itemized deductions for 1998 on his Federal return without a request for substantiation.

D. For 1999, 2000 and 2001, as detailed in the Findings of Fact, petitioner offered bogus documents, i.e., photocopies of altered documents and badly concocted fakes, to support his deductions for medical expenses, charitable contributions, real estate taxes, mortgage interest, and employee business expenses. In particular, a review of petitioner's attempt to substantiate his deductions claimed for medical expenses of \$17,700.00, \$17,600.00 and \$27,210.00 for 1999, 2000, and 2001, respectively, is telling. Looking closely at petitioner's "substantiation" for medical expenses of \$27,210.00, as an example, he presented a photocopy of a check in the amount of \$27,210.00 payable to a "Dr. O'Rourke" dated December 20, 2001 with a *handwritten* check number of 0350 on a checking account in the name of Paul Tam and Peter Tam at Abacus Federal Saving Bank, 6 Bowery, New York, New York and a *handwritten* check meter number on the bottom right corner of 03502721000. The Division of Taxation issued a subpoena *duces tecum* to Abacus Federal Savings Bank to produce copies of the checks petitioner presented in substantiation of his deductions, including one with a check number of 0350. According to an affidavit signed by Patrick Yu, Assistant Supervisor of Operations Administration at the bank, none of the check numbers identified in the subpoena matched those paid on petitioner's checking account (except for one, which petitioner had altered, photocopied, and presented to the Division to support a bogus deduction) including this check with the handwritten number of 0350. In other words, checks paid on this account were numbered up to only check #0280 so that the check to a "Dr. O'Rourke" was clearly concocted by petitioner in a bold, albeit unsophisticated, attempt to deceive.

E. Consequently, the notices of deficiency issued against petitioner which asserted combined New York State and City income tax due of (i) \$1,534.00 plus interest for 1999, (ii) \$1,487.00 plus interest for 2000, and (iii) \$1,693.00 plus interest for 2001, are sustained. Further, the assertion of negligence penalties for each of these years is also sustained in light of petitioner's failure to establish reasonable cause for their abatement, which, given the dishonesty noted above, is an impossible burden to meet (*cf.*, ***Matter of Riad***, *supra*).

F. Pursuant to Tax Law § 2018, if a petitioner's position in a Division of Tax Appeals proceeding is frivolous, a penalty of not more than \$500.00 may be imposed by the Tax Appeals Tribunal.⁴ The Tribunal recognized in ***Matter of Ellett*** (October 18, 2001) that an administrative law judge is authorized to impose a penalty against a petitioner for maintaining a frivolous position in an appropriate case, in light of Tax Law § 2010(1) which authorizes administrative law judges "to conduct any hearing or motion procedure authorized to be held within the division of tax appeals." In the matter at hand, petitioner filed a frivolous petition challenging the three notices of deficiency dated December 30, 2002 and continued to maintain a frivolous position of entitlement to concocted deductions, despite being advised that he needed to provide *original documentation* rather than photocopies of altered documents to substantiate his claimed deductions. Simply stated, petitioner's position in his second petition is "totally devoid of merit" (*see, Belsky v. Belsky*, 175 AD2d 900, 573 NYS2d 745). Further, petitioner's *continuing* mendaciousness, including his lying under oath at the hearing, wasted the resources of the Division of Taxation and the Division of Tax Appeals and abused the tax appeals process, and

⁴ By notice given by the administrative law judge in a letter dated April 20, 2004, the parties were provided with the opportunity to explain "why such a penalty should or should not be imposed."

provides further justification for the imposition of a penalty for maintaining a frivolous petition in the amount of \$500.00 (*see*, 20 NYCRR 3000.21).

G. Finally, some commending words are in order concerning the professional conduct and consideration of the auditor, Fred J. Havenbrook, in the face of a recalcitrant taxpayer. Mr. Havenbrook in his initial review of petitioner's tax returns for the three years at issue observed the very high medical expenses claimed by petitioner. But before he proceeded with his initial request for substantiation of these medical expenses, he compared petitioner's past returns because he did not want to issue a letter to petitioner which might "cause undue trauma to a taxpayer if [he] actually did have a medical concern (tr., p. 53)." However, when the auditor reviewed petitioner's past filings, he observed that the taxpayer was consistently claiming high amounts of medical expenses, which "set off alarms and that is why I issued the letter [seeking substantiation of medical expenses] for all years that were still within the statute of limitations" (tr., p. 53).

G. The petitions of Paul Tam are denied, the Notice of Deficiency dated November 13, 2001 and the three notices of deficiency each dated December 30, 2002 are all sustained, and a penalty of \$500.00 for maintaining a frivolous petition is imposed.

DATED: Troy, New York
May 27, 2004

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE